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STATUTES INVOLVED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No._____

DENNIS THOMAS SATERIALE,
Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE DISTRICT COURT OF APPEAL 2nd APPELATE DISTRICT, STATE OF CALIFORNIA.

Comes now Dennis Thomas Sateriale and petitions this Honorable Court for a Writ of Certiorari directed to the District Court of Appeal, 2nd Appellate District, State of California and prays that a Writ of Certiorari issues to review the judgment of the District Court of Appeal, 2nd Appellate District, State of California entered in the above case. Decision rendered December 16, 1966. Petition for Hearing in the Supreme Court Denied February 7, 1967.

OPINIONS

The opinions below are attached hereto in Appendix A.

JURISDICTION

Jurisdiction is conferred by Title 28, Section 1257 United States Code and by the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved are set forth in Appendix B.

STATEMENT OF THE CASE

Petitioner was charged by information filed in the Superior Court of the County of Los Angeles, State of California, as follows:

Counts 1 and 11 charged the petitioner with violation of Section 11501 of the Health and Safety Code. sell, furnish and give away a narcotic, to wit: Heroin.

Counts I and II charged the petitioner with the sale of heroin on November 8, 1964 and December 2, 1964.

Count III charged the petitioner with violation of of Section 11531 of the Health and Safety Code: sell, furnish and give away a narcotic, to-wit; marijuana.

Count III charged the petitioner with the sale of marijuana on or about December 4, 1964. (C.T. 52-54)

Petitioner entered a plea of Not Guilty to the charges against him and personally waived trial by jury. (C.T. 56)

The Case was submitted on the testimony taken from the transcripts at the preliminary examination. Petitioner was found Guilty of Count I, all other counts dismissed (C.T. 64). probation denied, and he was sentenced to State prison for the term prescribed by law.

Petitioner filed a timely Notice of Appeal in propria persona (C.T. 65). stay of execution was granted, whereafter present counsel was substituted as his attorney of record on appeal.

In the Appellate Court the method of raising the federal question was presented in the Opening Brief on Appeal by assignment of errors. (Opening brief p. 8-10). In the Petition for Hearing in the Supreme Court of California (pp. 6-10).

QUESIONS PRESENTED

1. Whether the petitioner was entrapped as a matter of law.

Whether it is a violation of due process of law and equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States, prohibiting the imposition of cruel and unusual punishment, to deny a defendant known to be an addict the benefits of the State's Narcotics Rehabilitation program solely because the defendant was convicted of selling a substance weighing one ounce which contained 34% heroin.

REASONS WHY THE WRIT SHOULD BE GRANTED

On November 8, 1964 Jesse Lee Thomas, a known informer, was working under the directions of the Sheriff's Department of Los Angeles for the purpose of enticing petitioner Sateriale for a sale of narcotics. (R.T. 9) On December 7, 1964 Thomas again made contact with Sateriale for the purpose of having him purchase narcotics for him. (R.T. 10) At all times during these sales Thomas worked under the direction of Sgt. Landry and Deputy Faillet of the Los Angeles Sheriff's Department as an undercover agent and was paid by the Sherriff's department. (R.T. 35)

The money used for these sales, furnished by the Sheriff's Dept. would have been the best evidence.

There the record is silent. There is no evidence or testimony that petitioner ever received money from Thomas, or that the same money was ever recovered. This was strictly hearsay and no offer of evidence ever introduced to the contrary.

ENTRAPMENT, GENERAL THEORY OF DEFENSE

Among the methods of lawless law enforcement practiced by some public officials is that of implanting a criminal scheme in the mind of an otherwise innocent individual with a view to prosecuting the individual in consequence.

Clark & Marshall, *Law of Crimes* (3rd Ed.) 162

Entrapment is the conception and planning of an offense by an officer and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer.

Sorrells v. United States, 287 U.S. 435

The defense consists of two elements, to each of which the courts have given varying degrees of emphasis: (1) The origin of the criminal intent in the mind of the officer; (2) the inducement of the defendant by the officer. These elements are closely related. The fact that no inducement was used by the officer is evidence that the criminal intent originated in the mind of the defendant, and the fact that such inducement

was used in evidence that the criminal intent originated in the mind of the officer.

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Initiation of the intent plus preparation by the officer.

State v. McCornish (Utah), 201 P. 637

A narcotic addict is a mentally ill person. Emotional dependence on the drug is an integral and crucial part of the legal definition of the word "addict."

People v. De La O, 59 Cal. 2d 128
People v. Victor, 62 A.C. 290, 313

The California Legislature sought by the enactment of Section 6450, *et seq.,* to assist in rehabilitating narcotic addicts; punishment is secondary.

Section 6450, *et. seq.,* contained no provision that the quantity involved is a bar to rehabilitation treatment. There is no distinction between the addict-user-seller and the addict-user. It is common knowledge that many users acquire part of their income with which to purchase drugs for their own use by selling narcotics to other users. In appellant's case, the court did not dispute appellant's addiction or the danger of his becoming addicted. The court merely summarily denied rehabilitation treatment on the ground of quantity.

The Legislature assumed there would be cases where, for many reasons, a person would not be amenable to treatment. Thus a section was provided (now W. & I. Sec. 3053) whereby the Director of the rehabilitation center could return a person as not being amenable to treatement after an observation period of sixty days. The import of the legislation involved is to make every effort at rehabilitation.

Here, appellant was summarily denied the right and sentenced to prison as an addict. At the time of probation and sentence hearing, appellant requested that he be referred to Department 95 of the Superior Court. The court refused. Appellant then requested a referral under the provisions of Section 1203.03 of the Penal Code, due to appellant's age. The court refused and stated "They won't take it under 1203.03 under these conditions. The amounts of heroin here involved were too great for any consideration." (R. T. 10, lines 8-10)

Where the trial court has erroneously refused to exercise the discretion conferred by 6451 because of a misapprehension as to the petitioner's eligibility for the program, the case will be remanded to permit the exercise of such discretion.

People v. Ortiz (1964) 61 Cal. 2nd 249, 252-256
People v. Jolke, 242 A.C.A. 125, 136

The objective of the program is an all out attempt to rehabilitate young and old alike to correct their

lives and return them to society. As a drug addict, if petitioner is deprived of this right, he will be thrown in a state prison as an addict, where no facilities are available to him.

CONCLUSION

For the reasons set forth above we pray that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

JEREMIAH CASSELMAN,
Attorney for Petitioner